

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Bruce A. Grove,
Plaintiff,

v.

H.E.F., Inc.,
t/a Sun Printing House
Defendant.

CIVIL ACTION
NO. 97-CV-373

McGlynn, J.

March , 1998

MEMORANDUM OF DECISION

Plaintiff Bruce A. Grove ("Mr. Grove") brings this action against defendant H.E.F., Inc., t/a Sun Printing House ("Sun Printing"), alleging discriminatory discharge in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621, and the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Cons. Stat. § 955. Before the court is Sun Printing's motion for summary judgment on both counts. For the reasons set forth below, Sun Printing's motion will be granted.

I. Background

The following facts are not in dispute. In August of 1986, Sun Printing hired Mr. Grove, then age forty-three, to become its controller at a salary of \$50,000. This job encompassed the responsibilities of Sun Printing's bookkeeper, who was retiring at the age of 83. In 1989, Mr. Grove also assumed the responsibilities of Sun Printing's treasurer, who was retiring at age 84.

In 1992, Mr. Grove was the only Sun Printing employee denied a salary increase. Mr. Grove testified that he was not given a raise because Herberton E. Fricke ("Fricke"), Sun Printing's CEO, "felt that he was making a lot of money for the job he was in." (Grove Dep. at 187). Mr. Grove did not challenge Mr. Fricke's decision or believe that it was age-based.

In September, 1992, Sun Printing evaluated Mr. Grove's job performance utilizing what appears to be a standard "Employee Evaluation Form." While he received an overall performance rating of "average," Mr. Grove was found to need improvement in the areas of professionalism, tact, creativity, and follow-through. Sun Mot. for Summ. J., Ex. C. Upon receiving that evaluation, Mr. Grove wrote on the page margin before signing the report, "[d]o not agree with personality, job knowledge [and] courtesy evaluation." Id.

On August 23, 1993, Mr. Fricke informed Mr. Grove that his employment would be terminated to enable Sun Printing to devote increased funds to customer service and decrease resources in administration. Mr. Grove remained at Sun Printing until November, 1993, during which time he trained his replacement, Paul Ajdaharian. Mr. Grove's annual salary was approximately \$62,000 at the time of his termination. During his employment, Mr. Grove was also given the use of a company car. Upon his departure, he received approximately \$7,000 in severance pay and was permitted to purchase his company car at below market value.

Paul Ajdaharian,¹ a friend of the Fricke family, was hired as Sun Printing's treasurer at an annual salary of \$45,000. He assumed many of the functions previously performed by Mr. Grove, and the remainder of Mr. Grove's duties were distributed among Cynthia Fricke Wollman (Sun Printing's president), Mr. Fricke, and Sun Printing's receptionist, Michelle Cromley. Mr. Ajdaharian's employment, however, was terminated within months of his hiring, and he was replaced by John Pagan.² Mr. Pagan was given the title of controller at an annual salary of \$34,000. He remained in that position for a "couple of years," Fricke Dep. at 81, at which time Michelle Cromley assumed most of the controller's duties and was promoted to the position of bookkeeper at a salary of \$28,000 a year.

Mr. Grove has acknowledged that Sun Printing's customer service department needed development, including the addition of a full-time employee with experience in the printing industry. Grove Dep. at 75-76. In August, 1993, Sun Printing hired Mickey Honnold to perform that function at an annual salary of \$50,000, which increased to \$60,000 on or about the effective date of Mr.

¹ Mr. Grove states that Paul Ajdaharian was 28-years-old at the time he was hired. Grove Reply Br. at 5. Sun Printing contends that Mr. Ajdaharian was 32 years of age. In any case, Mr. Ajdaharian's exact age at the time he was hired is immaterial, as either age is young enough to support an inference of age discrimination. See Keller v. ORIX Credit Alliance, 130 F.3d 1101, 1108 (3d Cir. 1997).

² John Pagan's date of birth is 7-19-54. Neither Mr. Grove nor Sun Printing has established Mr. Pagan's exact date of hire, so it is not clear whether Mr. Pagan was 39 or 40 years of age when he assumed the controller position.

Grove's termination. Within eleven months of Mr. Grove's discharge, Sun Printing hired a second customer service employee, Maria Summers, at an annual salary of \$50,000.

Mr. Grove filed a charge of age discrimination against Sun Printing with the Equal Employment Opportunity Commission ("EEOC") on or about June 14, 1994. On May 18, 1994, he filed a complaint with the Pennsylvania Human Relations Commission ("PHRC"). On January 24, 1996, the PHRC informed Mr. Grove that it was holding his case in abeyance while it was pending with the EEOC and that he had the right to sue under Pennsylvania law. The EEOC administratively dismissed Mr. Grove's charge on October 25, 1996. On January 16, 1997, Mr. Grove filed the instant suit.

II. Discussion

A. Summary Judgment Standard

Summary judgment is appropriate if, after consideration of the evidence in the light most favorable to the non-moving party, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An issue of fact is "genuine" only if the evidence is such that a reasonable jury could return a verdict for the non-moving party in light of the burdens of proof imposed by the substantive law. Anderson, 477 U.S. at 248. The party moving for summary judgment bears the initial burden of

demonstrating, by a preponderance of evidence, the absence of a genuine issue of material fact. Celotex v. Catrett, 477 U.S. 317, 322 (1986). Once this burden is met, the non-moving party must "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). This showing requires "evidence on which the jury could reasonably find for the plaintiff." Anderson, 477 U.S. at 252.

B. ADEA Standard

For purposes of this summary judgment motion only, Sun Printing concedes that Mr. Grove has made out a prima facie case of age discrimination. Sun Printing argues, however, that Mr. Grove has not provided evidence from which a factfinder could reasonably conclude that Sun Printing's proffered business reasons for terminating Mr. Grove are pretext intended to cloak a discriminatory discharge.

In an ADEA pretext case, the plaintiff bears the initial burden of demonstrating a prima facie case of discrimination.³ Brewer v. Quaker State Oil Refining Corp., 72 F.3d 326, 330 (3d Cir. 1997). Upon this showing, the burden shifts to the defendant to proffer a legitimate non-discriminatory reason for the adverse employment decision. Id. The burden then shifts

³ To make out a prima facie case of age discrimination, the plaintiff must show that he or she was: (1) within the protected age class, i.e., forty years of age or older; (2) qualified for the position at issue; (3) dismissed despite being qualified; and (4) replaced by a person sufficiently younger to create an inference of age discrimination. Keller v. ORIX Credit Alliance, 130 F.3d 1101, 1108 (3d Cir. 1997).

back to the plaintiff to demonstrate that the employer's proffered non-discriminatory reasons are mere pretext for age discrimination. Id. Throughout this burden-shifting process, the plaintiff retains the burden of persuading the factfinder "that age actually played a role in the adverse employment decision and had a determinative influence on the outcome." Armbruster v. Unisys Corp., 32 F.3d 768, 778 (3d Cir. 1994). The plaintiff may accomplish this through direct or circumstantial evidence. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Chauhan v. M. Alfieri Co., Inc., 897 F.2d 123, 128 (3d Cir. 1990).

To show pretext on the employer's part, the plaintiff must submit evidence from which the court could reasonably either: (1) disbelieve the employer's articulated legitimate reasons for its adverse employment action; or (2) believe that invidious discriminatory reasons were more likely than not a motivating or determinative cause of the employer's adverse employment action. Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir. 1994). Pretext is not demonstrated by showing simply that the employer was mistaken in its business judgment. Sempier v. Johnson & Higgins, 45 F.3d 724, 731 (3d Cir. 1995). Rather, "[t]he district court must determine whether the plaintiff has cast sufficient doubt upon the employer's proffered reasons to permit a reasonable factfinder to conclude that the reasons are incredible." Sheridan v. E.I. DuPont Nemours & Co., 100 F.3d 1061, 1079 (3d Cir. 1996) (en banc). The court may not, however, weigh disputed

evidence and decide for itself which is more probative. Brewer v. Quaker State Oil Refining Corp. 72 F.3d 326, 331 (3d Cir. 1995).

Sun Printing proffers three business reasons for discharging Mr. Grove: (1) its decision to restructure and reallocate resources from administrative functions to the company's customer service area; (2) his "average" work performance; and (3) his unprofessional conduct. This evidence is sufficient to meet Sun Printing's burden of articulating legitimate, non-discriminatory reasons for Mr. Grove's termination. The burden now shifts to Mr. Grove to provide evidence establishing a reasonable inference that these proffered business explanations are unworthy of credence. Sempier, 45 F.3d at 728. Because Mr. Grove does not point to any evidence that age discrimination was more likely than not a motivating or determinative cause of his termination,⁴ the court will focus its analysis on the first prong of the Fuentes test, whether there is any evidence from which a factfinder could reasonably disbelieve Sun Printing's proffered business reasons for discharging Mr. Grove. Fuentes, 32 F.2d at 763.

⁴ Plaintiff has not submitted any evidence of age discrimination beyond his prima facie case, i.e., that he was over the age of 40, qualified for the position, discharged from the position, and replaced by an employee young enough to create an inference of age discrimination. See Keller v. ORIX Credit Alliance, Inc., 130 F.3d 1101, 1108 (3d Cir. 1997).

1. Reallocation of Resources

Sun Printing claims that Mr. Grove was terminated primarily so that the company could reallocate resources from Mr. Grove's administrative position to the company's customer service operations. In response, Mr. Grove argues that the circumstances surrounding his departure reveal the pretextual nature of Sun Printing's resource-shifting explanation.

First, Mr. Grove claims that customer service budget increased by only \$10,000 at the time he was terminated. He offers the fact that Micky Honnold, the full-time employee hired to manage customer service, had a salary only \$10,000 greater than the part-time employee who previously occupied that position. Mr. Grove's argument, however, ignores two important facts: (1) the additional \$10,000 increase in Mr. Honnold's salary at around the same time Mr. Grove left the company; and (2) the fact that within 11 months of Mr. Grove's termination, Sun Printing hired a second customer service employee, Maria Summers, at an annual salary of \$50,000. Thus, within a year of Mr. Grove's departure, Sun Printing was spending \$110,000 annually on the salaries of its customer service employees -- a 275% increase over the time before Mr. Honnold's hiring. Further, Sun Printing paid Mr. Ajdaharian approximately \$20,000 less than it had paid Mr. Grove, John Pagan approximately \$30,000 less, and Michelle Cromley approximately \$34,000 less. These facts strongly corroborate Sun Printing's claim that it discharged Mr. Grove in order to decrease administrative

expenditures so that it could increase its customer service staff.

Second, Mr. Grove observes that Ms. Wollman's salary increased \$41,000 between early 1993 and 1997. Mr. Grove does not explain the significance of this fact. The court, however, surmises that Mr. Grove believes this pay raise indicates that Sun Printing has actually increased its administrative expenditures since his discharge. The fact that Sun Printing's president has received a \$41,000 salary increase over the past four years, however, does nothing to disprove the company's proffered explanation that it was reallocating its resources at the time of Mr. Grove's discharge.

Third, Mr. Grove claims that Sun Printing actually incurred additional expenses as a result of Mr. Grove's departure because the company "agreed to pay the outside accountants more than they had been receiving" during Mr. Grove's tenure. Pl. Reply Br. at 241. Mr. Grove does not state the amount by which the outside accountants' payment was increased, or the total increase in accounting costs after his departure. As a result, this information does not allow a reasonable inference that Mr. Grove's discharge actually caused a net increase in accounting costs for Sun Printing.

Finally, Mr. Grove argues that his replacement, Paul Ajdaharian, was not qualified to take Mr. Grove's place and that Sun Printing made no investigation of Mr. Ajdaharian's qualifications before hiring him. Even if true, these assertions

are not relevant to whether Sun Printing was reallocating its resources by discharging Mr. Grove.

The record shows that during the period shortly before Mr. Grove was discharged and within 11 months afterwards, Sun Printing increased funding for its customer service operations and decreased costs associated with Mr. Grove's former duties. In determining whether an employer's reasons are pretext, the court examines the record "for evidence of inconsistencies or anomalies that could support an inference that the employer did not act for its stated reasons." Sempier v. Johnson & Higgins, 45 F.3d. 724, 731 (3d Cir. 1995). Viewing Mr. Grove's evidence of pretext in the light most favorable to him, the court sees nothing from which a factfinder could reasonably disbelieve Sun Printing's explanation that it fired Mr. Grove in order to reallocate resources to its customer services department.

2. Work Performance & Lack of Professionalism

According to Sun Printing, two secondary reasons for Mr. Grove's termination were his "average" work performance and his lack of professionalism. In its reply brief, Sun Printing characterizes Mr. Grove as "an average employee whose employment was marred by some significant performance issues." Sun Reply Br. at 3. A September, 1992 job performance evaluation performed by Mr. Fricke and Ms. Wollman gave Mr. Grove an overall performance rating of "average," and noted that he needed improvement in the areas of professionalism, tact, creativity, and follow-through. Sun Mot. for Summ. J., Ex. C. Sun Printing

further contends that Mr. Grove made several unprofessional remarks in the workplace, including: (1) racist, sexist, and anti-Semitic comments; (2) a reference to Ms. Wollman as "the boss's daughter;" and (3) a statement to Ms. Wollman, upon learning of an employee's pregnancy, in which he said, "good, now we don't have to pay benefits."

Mr. Grove submits a host of circumstantial arguments which he believes justify a finding that these reasons for discharge are pretext.

i. Performance

Mr. Grove attacks the validity of his job performance evaluation by noting that it contained "highly subjective judgments." Grove Reply Br. at 11. It has been recognized that subjective evaluations "are more susceptible of abuse and more likely to mask pretext," Fowle v. C&C Cola, 868 F.2d 59, 64 (3d Cir. 1989), and the court concurs that Sun Printing's performance evaluation of Mr. Grove was subjective in nature. What Mr. Grove does not make clear is why the subjective nature of the evaluation makes Sun Printing's proffer of it pretextual. Although Mr. Grove wrote on the evaluation form that he disagreed with Sun Printing's assessment of him, his disagreement is not relevant. "[T]he factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent." Brewer v. Quaker State Oil Refining Corp., 72 F.3d 326, 331 (3d Cir. 1995) (internal quotation marks omitted); see also Keller v. ORIX

Credit Alliance, Inc., 130 F.3d 1101, 1109 (3d Cir. 1997) ("The question is not whether the employer made the best or even a sound, business decision; it is whether the real reason is [discrimination]."). Without a showing that Sun Printing performed the evaluation to create a pretext for terminating Mr. Grove, the evaluation's subjectivity is not grounds for disbelieving Sun Printing's proffer of it.

Mr. Grove next argues that the evaluation did not even play a role in his discharge because Mr. Fricke admitted in deposition that he did not review Mr. Grove's personnel file before terminating him. This assertion mischaracterizes Mr. Fricke's deposition testimony. Mr. Fricke clearly stated that he "probably" did review the file, but was not certain. Fricke Dep. at 167-68. In any case, Mr. Fricke and Ms. Wollman jointly performed and discussed the evaluation with Mr. Grove. Fricke Dep. at 168. Thus, Mr. Fricke's possible failure to review Mr. Grove's personnel file provides no reasonable basis for disbelieving Sun Printing's proffered dissatisfaction with Mr. Grove's performance.

Mr. Grove also makes much of the fact that no "action plan" was designed for him to address his alleged performance problems. He sees pretext in the fact that Ms. Wollman designed an action plan for John Pagan -- the second employee to succeed Mr. Grove -- to remedy concerns with his performance. This, however, is not a reasonable inference from Ms. Wollman's testimony. In deposition, Ms. Wollman explained that she had John Pagan put

together a list of dates for when tasks would be completed, an "action plan." Wollman Dep. at 219. She did not state that this plan was to remedy Mr. Pagan's job performance. When asked why she did not have Mr. Grove formulate an action plan, she responded, "I was new to the position [of president] and didn't think about something like that." Id. at 220. This is not a reasonable basis for disbelieving the proffer of Mr. Grove's alleged performance problems as a reason supporting his termination.

Mr. Grove also argues that Sun Printing's decision to allow him to remain at the company to train his successor is proof of his satisfactory performance. "If Mr. Grove presented serious concerns, Defendant would hardly have let him stay on, in charge of all its books and financial records, for three months after he was told to leave . . . [and] to train his successor." Grove Reply Br. at 13. Here, Mr. Grove exaggerates Sun Printing's stated concerns with his performance. The record does not indicate that Mr. Grove presented such serious concerns that his immediate termination was necessary. As a consequence, the fact that Mr. Grove was permitted to remain to train his successor does not reasonably support the inference that Sun Printing was in fact satisfied with his job performance.

Mr. Grove next offers a certificate he received in March, 1993, signed by Mr. Fricke, recognizing Mr. Grove for "Five Years of Quality Performance to the Open Shop Printing Industry." See Fricke Dep., Pl. Ex. 20. The suggestion is that Mr. Grove's

performance could not have been wanting if he received such a certificate. To the contrary, the record indicates that these certificates were pre-printed in bulk and used by Sun Printing to recognize years of service, not the quality of the recipient's performance. Wollman Dep. at 264. Mr. Grove does not offer any evidence, aside from the certificate itself, proving otherwise. This certificate is not probative of whether Sun Printing's criticism of Mr. Grove's performance was pretext.

Even when viewed in the light most favorable to Mr. Grove, the above-mentioned evidence fails to show contradictions and inconsistencies so that a factfinder could reasonably disbelieve Sun Printing's proffered explanation that it was dissatisfied with Mr. Grove's job performance.

ii. Lack of Professionalism

As to Mr. Grove's alleged unprofessional comments, he denies some of them, but does not specify which comments he denies making. Grove Reply Br. at 9. While the non-movant's version of the truth is assumed to be true on summary judgment, without knowing which comments Mr. Grove claims not to have made, the court cannot use his vague denial to rebut Sun Printing's claim that Mr. Grove made such statements. See 11 James W. Moore et al., Moore's Federal Practice § 56.11[6][b] (3d ed. 1997) ("[T]he modern view holds that summary judgment may be appropriate even if germane facts are contested, where the nonmovant fails to provide substantial evidence of the disputed facts."). Further, Mr. Grove admits to the comment in which he stated, "good, now we

don't have to pay benefits" to the pregnant employee. He argues that he made the comment to Ms. Wollman and the plant managers, not to the pregnant employee, and that Ms. Wollman herself knew that the woman would not get benefits. These assertions, however, are not evidence from which the court could reasonably disbelieve Sun Printing's perception that this was an unprofessional comment under the circumstances.

Mr. Grove also argues that Sun Printing's proffer of Mr. Grove's alleged racist and anti-Semitic comments is pretext because: (1) no minority employees complained about Mr. Grove; (2) Mr. Fricke does not recall ever telling Mr. Grove that he disapproved of some of the comments; and (3) Mr. Fricke acknowledged that he had no objection to private comments such as those he claims Mr. Grove made. Again, Mr. Grove mischaracterizes Mr. Fricke's deposition testimony. While acknowledging that no black employee had ever complained to him about anyone at the company making racist comments, Mr. Fricke specifically stated that he did discuss Mr. Grove's comments with Mr. Grove. Fricke Dep. at 68-69. Furthermore, Mr. Fricke did not acknowledge that he had no objection to racist or anti-Semitic comments made in private. With regard to such comments, Mr. Fricke stated, "[i]f you're together it's all right. But if it came out it would not be good for the company." Id. At most, this statement shows that Mr. Fricke would refrain from objecting to such comments if they were made in private conversations. It does not reasonably support the inference that Sun Printing's

proffer of Mr. Grove's alleged comments merits disbelief.

Mr. Grove also attempts to show that making unprofessional comments was the norm at Sun Printing. He cites the testimony of Mr. Fricke and Ms. Wollman, in which they admit to using profanity at the office and in which Ms. Wollman admits to having once described to Mr. Grove a college prank involving a sexually-slanted play on words. However, these comments do not reasonably support the inference that the professional atmosphere at Sun Printing allowed for racist, sexist, and anti-Semitic comments of the kind attributed to Mr. Grove, and which Mr. Grove has not specifically denied making. See Fricke Dep. at 139 (stating that he "very seldom" used profanity in the office); Wollman Dep. at 116-21.

The facts submitted by Mr. Grove, taken together and viewed in the light most favorable to him, do not demonstrate contradictions and inconsistencies so that a factfinder could reasonably disbelieve Sun Printing's problems with his lack of professionalism.

C. PHRA Standard

Mr. Grove also alleges that his termination violated the Pennsylvania Human Relations Act, 43 Pa. Stat. Ann. § 955. Like the ADEA, the PHRA prohibits employers from discriminating against their employees with respect to compensation, hire, tenure, terms, conditions or privileges of employment. Id.

The court need not review Mr. Grove's PHRA claim in great detail, as "pretext cases under the PHRA are analyzed under the

same legal framework as Title VII and ADEA claims." Armbruster v. Erie Civic Center Auth., 937 F. Supp. 484 (W.D. Pa. 1995) (citing Griffiths v. CIGNA Corp., 988 F.2d 457, 469 n.10 (3d Cir. 1993); Daly v. Unicare Corp., 68 F.E.P. 208, 211 n.7, 1995 WL 251385 * 8 (E.D. Pa. 1995); Allegheny Housing Rehabilitation Corp. v. Pennsylvania Human Relations Comm'n, 532 A.2d 315, 317-19 (Pa. 1987)), aff'd, 100 F.3d 946 (3d Cir. 1996). For the reasons discussed in part B of this memorandum, Mr. Grove's PHRA claim also fails to survive summary judgment.

III. Conclusion

Viewed in the light most favorable to Mr. Grove, the evidence does not create a genuine issue of material fact as to whether Sun Printing's termination of Mr. Grove was discriminatorily age-based. Sun Printings's motion for summary judgment will therefore be granted.

An appropriate order follows.